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SUBJECT: USTR ANNOUNCES REVISIONS TO HORMONE BEEF
SANCTIONED PRODUCTS

¶1. (U) Summary: On January 14, 2009, the United States Trade Representative (USTR) announced a revised list of products subject to retaliatory duties in connection with the long-standing EU ban on beef from cattle raised with growth hormones. The changes to the retaliation list are intended to promote a market-opening resolution to the dispute. USTR recently led an interagency review of the retaliation list and decided to change the list of products and to apply retaliatory duties to products of all EU Member States except the United Kingdom, which alone opposed the original ban. The revised list will be available on the USTR website immediately and will be published in the Federal Register in several days. Customs and Border Protection will begin collecting increased duties on products that will be added to the revised list on March 23, 2009. The changes to the list are likely to arouse keen host country and press interest in the EU, and may also attract the interest of governments or press in other G20 countries. Post may use the following talking points and, if asked, Q and As when responding to inquiries. End summary.

¶2. (U) On January 14, 2009, USTR announced revisions to the list of products subject to retaliatory duties in connection with the long-standing EU ban on beef from cattle raised with growth hormones. The revised list is available on the USTR website at www.ustr.gov. USTR has been working with State, USDA, Commerce and other agencies on these revisions. The changes are intended to promote a market-opening resolution to the World Trade Organization (WTO) dispute over the EU ban. The length of time the increased duties remain in effect will depend on the willingness of the European Commission and EU Member States to conclude a market-opening resolution to the dispute.

¶3. (U) For approximately 20 years, the EU has banned imports of beef and beef products produced with growth-promoting hormones. In 1998, the WTO Dispute Settlement Body found this ban inconsistent with WTO rules and determined that it was causing over \$100 million in trade harm annually to U.S. beef producers. The WTO authorized the United States in 1999 to suspend tariff concessions and impose increased duties on certain EU products. Acting on the basis of that authorization, the United States imposed increased duties on certain products of countries that were then members of the EU (except the United Kingdom). The products and Member

States subject to those duties have remained unchanged since 1999, even as new countries have joined the EU. U.S. beef producers, meanwhile, have suffered substantial trade damage since the 1998 WTO findings.

14. (U) The USG recently reviewed whether the long-standing duties were effectively encouraging a resolution of the dispute. After receiving more than 600 public comments and interagency input, USTR decided to change the list of products and to apply duties to products of all current EU Member States except the UK. USTR also increased the rate of duty on one product, Roquefort cheese.

15. (U) USTR announced the revised list on January 14; it will appear in the Federal Register in several days, and U.S. Customs and Border Protection will begin collecting duties on products that have been added to the revised list on March 23, 2009.

16. (U) The EU is now seeking a finding that it has come into compliance with its WTO obligations and that, therefore, increased U.S. duties on EU products are no longer warranted.

17. (U) USTR and other agencies believe changing the list of products subject to retaliatory duties will provide impetus to the EU to seek a WTO-consistent resolution of the dispute.

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18. (U) On a separate track, U.S. and EU negotiators had tried to negotiate an interim agreement, whereby the EU would provide increased access to U.S. beef produced without the aid of growth hormones and the United States would suspend the action imposing increased duties on certain EU products. Negotiations on this proposal, now underway for more than five years, have stalled.

19. (U) Following are talking points and Qs and As on revisions to the beef hormones retaliation list. Posts can draw on the talking points as needed, but Q and As should be used only if asked. Questions on this issue should be addressed to Bill Busis (202-395-3058, William.Busis@ustr.eop.gov), David Weiner (202-395-9679, david.weiner@ustr.eop.gov) or Roger Wentzel (202-395-5124, roger.wentzel@ustr.eop.gov) at USTR or Jenna Purl, Office of European Regional Affairs, (202-647-1605, purljk@state.gov). Questions about domestic litigation on the 1999 retaliation list should be directed to Bill Busis.

Talking Points on Revision of Beef List

Talking points to be used with representatives of the European Commission and of EU Member States regarding the modified list of products against which retaliatory import duties will be imposed in the WTO Beef Hormones case.

-- On January 14, 2009, the United States announced that - after nearly 10 years - it is modifying the list of products in connection with the WTO dispute settlement case on the EU's ban on beef and beef products from animals that have been administered any of six specific growth-promoting hormones.

-- Nearly 11 years ago, in 1998, the WTO Dispute Settlement Body adopted findings in favor of the United States, stating that the EU's ban was not scientifically justified and thus inconsistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

-- When the EU chose not to comply with the WTO rulings, the WTO authorized the United States to impose increased duties on EU products with a comparable annual trade value in the amount of \$116.8 million. The increased duties went into effect in July 1999 and the list of products subject to those

duties has remained unchanged since that time.

-- Despite the WTO findings and nearly a decade of import duties, U.S. beef producers remain shut out of the EU market in one of the longest-running unresolved trade disputes in the history of the WTO.

-- Given these circumstances, the United States has concluded that the 1999 duties have not been effective in encouraging the EU to resolve the dispute and that modifications to the list were needed to try to change the dynamic in the EU and to address the economic effects of the duties in the United States.

-- Following an intensive review, during which a U.S. government team reviewed more than 600 public submissions, we decided to revise the existing list of products against which duties were initially imposed in 1999. In addition to imposing duties on a number of products that were not covered by the original list, the revised list covers products imported from Member States that joined the EU after 1999. The rate of duty will also be increased for one product that will remain on the list from 1999.

-- Our hope is that the modification of the list will promote a WTO-consistent resolution to the dispute. One possible resolution that the United States and EU have been exploring for five years is a negotiated solution. Under this scenario, the EU would provide increased access to U.S. beef

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produced without the aid of growth hormones. The United States would in turn suspend the increased duties on certain EU products. (NB: This and the points below describing the status of the market access negotiations with the European Commission should only be used in discussions with European Commission or EU Member State officials.)

-- This interim solution would provide benefits to both parties: the EU would obtain a lifting of the increased tariffs, and EU consumers would gain access to high quality, "hormone-free" U.S. beef. The United States would finally obtain market access for U.S. beef producers, who have suffered substantial trade damage since the ban first went into effect over 20 years ago.

-- The United States and the Commission have reached agreement on some elements of this interim solution, but the negotiations have been stalled for the past five months because the European Commission has refused to negotiate a tonnage figure for U.S. "hormone-free" beef.

-- The duration of the WTO-authorized tariff action is entirely within the hands of the Commission and EU Member States. We urge your government to instruct the Commission to move forward on concluding an interim agreement in the beef dispute.

Qs and As

1Q. The EU claims its 2003 beef ban is WTO-consistent, the Appellate Body advised the parties to initiate an Article 21.5 proceeding to examine this issue, and the EU has now requested consultations. Does it make sense to change the list in these circumstances?

1A. Yes. The Appellate Body was explicit that it was not making a finding on whether the EU's new ban has brought it into compliance, and that the United States is entitled to maintain the duties until the WTO does make a finding that the EU has come into compliance.

The 1996 WTO dispute remains unresolved more than ten years

later. Our beef producers have been suffering economic harm for this entire period. And those depending on imports of the products subject to the duties have been suffering the economic consequences for almost 10 years. The WTO does not require the United States to maintain that economic burden on the same people indefinitely.

Until there is a new WTO ruling or a resolution of the dispute, the United States will continue to exercise its WTO rights.

1Q. (To be used if someone argues that it is WTO-inconsistent to revise the 1999 action.)

1A. In 1999, the WTO authorized the United States to suspend tariff concessions and to increase duties on EU products with an annual trade value of \$116.8 million. The revised list, like the original 1999 list, is drawn from the list of WTO-authorized products and is within the WTO-authorized amount. It is fully within U.S. rights under the WTO Agreement to change the composition of the product list. We would also note that the Commission has in the past several years itself changed lists of products subject to WTO-authorized increased duties.

1Q. In 2000 Congress amended Section 301 to require semi-annual changes to the list of products subject to increased duties. But the list hasn't changed until now. Will USTR now start changing the list every six months?

1A. The statute allows flexibility for USTR to consider

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relevant circumstances, including the status of settlement negotiations, in deciding on when and how to modify an action taken under Section 301. It would not be productive or appropriate to try to predict when and if circumstances might call for future modifications to the list of products subject to increased duties. Rather, the goal of this modification is to encourage a resolution of the dispute, which, if successful, would allow for USTR to lift the duties altogether.

1Q. Given that nearly 10 years have passed since the original retaliation list was adopted, what was the methodology that the United States used to calculate trade values of the list?

1A. In developing the revised list, the United States drew upon the list of items and associated trade values that were the basis for the original WTO authorization to suspend concessions.

1Q. What relationship does the October 16 WTO Appellate Body Report have to USTR's decision to announce possible changes to the list just two weeks later?

1A. On October 16, the Appellate Body rejected the Commission's claims that the United States had to terminate the action taken with respect to EU products in 1999, and the Appellate Body confirmed that the WTO authorization to the United States to suspend WTO tariff concessions to the EU remains in effect. The Appellate Body decision was not determinative, but it was certainly a factor that we considered.

1Q. Could you provide more information on the domestic court proceeding referenced in press reports, and how it influenced USTR's action?

1A. A domestic importer of one of the products on the current list brought a case in the U.S. Court of International Trade claiming that domestic law required USTR to review the

effectiveness of the current list of products subject to increased duties. The court upheld the claim that a review needed to be conducted, and on October 15, 2008, the court issued an order that required USTR to conduct a review. USTR had to report the results of the review to the court by no later than January 14, 2009.

Q. Why was this decision made so close to the end of the Administration?

A. The timing was not determined by any political factor, but rather by the date we started the review, and by the progress of the review.

USTR announced the initiation of the review on October 31, shortly after the WTO Appellate Body, on October 16, confirmed that the U.S. authorization to suspend concessions remained in effect. Upon initiating the review, we explained that we hoped to complete the process by the end of the year.

The timing was also influenced by a domestic court proceeding. On October 15, 2008, the U.S. Court of International Trade ordered the USTR to conduct a review of the effectiveness of the current list. USTR was required to report the results of its review to the court on January 14, 2009.

As part of the review, USTR issued a request for comments. Because of the large number of comments received (over 600), the review could not be completed by the end of 2008. We needed an additional extra two weeks to finish the work.

The United States initiated action to enforce its rights in the WTO more than ten years ago, so it would be difficult to

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suggest that we've rushed a decision to modify the retaliation list.

Q. How did you decide which products to add to/remove from the list?

A. An interagency team of economists and trade policy experts reviewed the public comments submitted in response to the November 6 Federal Register notice. In making adjustments to the list, our goal was to select a combination of products that we believed would be most effective in terms of encouraging a resolution of the dispute, while at the same time not causing disproportionate harm to U.S. economic interests.

Q. As in 1999, you exclude the UK from any retaliation under the revised list. Why has the UK received such preferential treatment?

A. The UK has opposed the EU's ban on U.S. meat and meat products since the inception of this dispute. Accordingly, the United States excluded UK products from the 1999 list. We understand that the UK continues to oppose the ban, and for this reason we are maintaining our 1999 decision to exclude UK products.

Q. Why were products from X country, or why was a particular product, included on the retaliation list?

A. In constructing the revised list, we chose from the list of potential products and trade values authorized by the WTO in 1999.

We made a case-by-case examination of each product on the WTO-authorized list, and we were principally guided by two considerations: potential effectiveness in promoting a

resolution of the dispute and avoiding disproportionate economic harm to U.S. interests.

We cannot provide detailed comments on why any particular product from any particular country was included or excluded from the new list. Every decision was based on full consideration of all available information, including the public comments received in response to the notice.

If any member State is unhappy with the composition of the modified list, they have a clear recourse: They should urge the Commission to promptly move forward on concluding a WTO-consistent resolution of the dispute.

1Q. Why does Italy account for a significant portion of the retaliation?

1A. In constructing the revised list, we chose from the list of potential products and trade values authorized by the WTO in 1999.

We made a case-by-case examination of each product on the WTO-authorized list, and we were principally guided by two considerations: potential effectiveness in promoting a resolution of the dispute and avoiding disproportionate economic harm to U.S. interests.

We cannot provide detailed comments on why any particular product from any particular country was included or excluded from the new list. Every decision was based on full consideration of all available information, including the public comments received in response to the notice.

If Italy or any other member State is unhappy with the composition of the modified list, they have a clear recourse: They should urge the Commission to promptly move forward on concluding a WTO-consistent resolution of the dispute.

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1Q. Why does Denmark account for a significant portion of the retaliation?

1A. In constructing the revised list, we chose from the list of potential products and trade values authorized by the WTO in 1999.

We made a case-by-case examination of each product on the WTO-authorized list, and we were principally guided by two considerations: potential effectiveness in promoting a resolution of the dispute and avoiding disproportionate economic harm to U.S. interests.

We cannot provide detailed comments on why particular products were included or excluded from the new list. Every decision was based on full consideration of all available information, including the public comments received in response to the notice.

If Denmark or any other member State is unhappy with the composition of the modified list, they have a clear recourse: They should urge the Commission to promptly move forward on concluding a WTO-consistent resolution of the dispute.

1Q. Why did you impose 300% retaliatory duties on Roquefort cheese?

1A. The purpose of these duties is to have an impact on particular constituencies to generate support for a change in the EU's approach to this dispute. Imports of Roquefort cheese have continued since 1999, notwithstanding the imposition of 100% duties. We expect that a 300% duty will help to achieve the desired effect.

Q. Why did you impose retaliatory duties on the imports of almost all EU members?

A. The Commission and EU Member States imposed the ban on U.S. beef, and the Commission and EU Member States each have a role in deciding whether to reach agreement on an interim resolution. The only Member State we excluded was the UK, because it opposed the ban on U.S. beef from the outset.

Q. Why did you impose retaliatory duties on the Member States who joined the EU after 2003, when the beef hormones ban was last voted on?

A. The Commission and all EU member States are applying the ban to U.S. products and have a role in deciding whether to reach agreement on an interim solution.

Q. We heard that U.S. pork producers put considerable pressure on you to retain pork items on the list. Did the pork industry influence the outcome of the list?

A. We received a broad range of public comments, including from the U.S. pork industry. Each decision was made on a case-by-case basis.

Q. Do you plan to implement the 100 percent tariffs retroactively?

A. The increased duties will apply to imports on or after March 23, 2009, approximately 60 days after the revised list is expected to be published in the Federal Register. With respect to products that will no longer be subject to this action, the additional duties currently being applied will not apply to imports on or after March 23, 2009.

Q. When will the increased duties go into effect?

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A. The increased duties will apply to imports on or after March 23, 2009, approximately 60 days after the revised list is expected to be published in the Federal Register. With respect to products that will no longer be subject to this action, the additional duties currently being applied will not apply to imports on or after March 23, 2009.

Q. Could you describe the basic outline of the interim agreement you have been discussing with the EU?

A. We have been trying to reach an agreement with the Commission in which U.S. livestock producers would achieve increased access for U.S. beef from cattle not treated with growth hormones in exchange for a U.S. suspension of the action imposing increased duties on certain EU products.

This interim solution would provide benefits to both parties: the EU would obtain a lifting of the increased tariffs, and EU consumers would gain access to high quality, "hormone-free" U.S. beef. The United States would finally obtain market access for U.S. beef producers, who have suffered substantial trade damage since the 1998 WTO findings alone.

The United States and the Commission have reached agreement on some elements of this interim solution, but the negotiations have been stalled for the past five months because the European Commission has refused to negotiate a tonnage figure for U.S. "hormone-free" beef. (NB: This and other points describing the status of the market access negotiations with the European Commission should only be used in discussions with European Commission or EU Member State officials.)

Q. Won't this revision of the list have a negative effect on the ongoing negotiations between the United States and the EU to reach an interim settlement on the beef hormone issue?

A. We believe that the modification of the product list will promote a resolution. The United States has been attempting to resolve this dispute for many years. The negotiations are now stalled because the Commission will not negotiate on the market access issue at the core of a potential interim settlement. It is hard to see how the current negotiating situation could get worse. The U.S. interim goal remains a market-opening agreement that benefits both parties. (NB: This and other points describing the status of the market access negotiations with the European Commission should only be used in discussions with European Commission or EU Member State officials.)

Q. By imposing prohibitive import duties on previously unaffected products, is the United States acting consistently with the spirit of the November G20 commitment on a year-long standstill on protectionist trade measures?

A. (NB: This question refers to the November 15, 2008 Declaration of the G20 Summit on Financial Markets and the World Economy, in which G20 members pledged to observe a one-year standstill on new trade restrictions. The relevant text follows: "We underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports.")

The U.S. decision to modify the list of EU imports subject to increased duties in the beef hormones dispute is not inconsistent with the G20 Declaration.

The United States is modifying a long-standing response to a trade barrier, not imposing a new barrier. By changing the composition of the retaliation list, the United States is

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seeking to promote the removal of a trade barrier that has existed for almost two decades. The United States goal is not to shelter domestic industries.

The right of the United States to impose increased duties, and the trade value of the action, were established by the WTO in 1999. As recently as October 2008, a WTO Appellate Body panel reaffirmed the U.S. right to take trade action relating to this dispute.

Under the modification, the United States is merely changing the composition of the product list.

Q. Is there any doubt about the safety of these hormones? Presumably the EU wouldn't take this position if there were not some reason for consumers to be concerned about hormones.

A. Scientific reviews of these hormones, established international standards pertaining to their use, and a longstanding history of their administration for growth promotion purposes all support the conclusion that the proper use of these hormones as growth promoters in animals for human consumption is safe. In fact, the natural hormones that are subject to the EU's ban also occur naturally in every human as well as in foods such as eggs, butter and milk, often in concentrations substantially greater than in meat from cattle treated with these hormones.

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